

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRACKMAN, INC.,

Plaintiff,

v.

GSP GOLF AB d/b/a GSPRO and
DAVOR BOGAVAC,

Defendants.

Case No. 1:23-cv-598

COMPLAINT

Plaintiff TrackMan, Inc. brings this complaint against Defendants GSP Golf AB d/b/a GSPro and Davor Bogavac (collectively, “Defendants”).

THE PARTIES

1. TrackMan, Inc. (“TrackMan”) is a technology company that offers hardware and software for tracking and simulating athletic performance. TrackMan is a Delaware corporation with its headquarters and principal place of business at 16445 North 91st Street, Suite 104, Scottsdale, Arizona, 85260.

2. GSP Golf AB d/b/a GSPro (“GSPro”) is a provider of golf simulator software. GSPro is a Swedish corporation with an address at Älgvägen 16, 428 34 Kålleröd, Sweden.

3. Davor Bogavac is the founder, co-owner, and Chief Executive Officer, and is responsible for the day-to-day management, of GSPro. Mr. Bogavac resides at Älgvägen 16, 428 34 Kålleröd, Sweden.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338; diversity jurisdiction under 28 U.S.C. § 1332, as the matter in controversy exceeds the minimum required by the statute; and supplemental jurisdiction under 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over Defendants under N.Y. C.P.L.R. § 302. Defendants' software infringes TrackMan's copyrights, and Defendants' conduct violates an end-user license agreement applicable to TrackMan's software. On information and belief, Defendants offer their infringing software to residents of New York, and New York residents have purchased, downloaded, accessed, and used Defendants' infringing software. Accordingly, personal jurisdiction arises because Defendants have (a) transacted business within the State of New York; (b) committed tortious acts within the State of New York; (c) and committed tortious acts without the State of New York causing injury to TrackMan within the state, where Defendants expected and should reasonably expect the acts to have consequences in the State of New York and Defendants derive substantial revenue from interstate or international commerce. The exercise of personal jurisdiction comports with the Due Process Clause of the U.S. Constitution because Defendants have minimum contacts with the State of New York such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

6. This Court also has personal jurisdiction over Defendants because Defendants are subject to an end-user license agreement for TrackMan's software which provides that Defendants agree to the exercise of personal jurisdiction in the federal and state courts of New York in connection with any dispute.

7. This Court also has personal jurisdiction over Defendants GSPro and Davor Boguvac under Federal Rule of Civil Procedure 4(k)(2), as these Defendants are not subject to jurisdiction in any state's courts of general jurisdiction and exercising jurisdiction is consistent with the U.S. Constitution and laws.

8. Venue arises in this District under 28 U.S.C. § 1391 because, *inter alia*, a substantial part of the events giving rise to TrackMan's claims occurred, and a substantial part of property that is the subject of the action is situated, in this District, or else there is no

district in which an action may otherwise be brought as provided in 28 U.S.C. §1391. Venue is also appropriate under 28 U.S.C. § 1400(a) because Defendants may be found in this District.

9. Venue also arises in this District because Defendants are subject to contractual provisions in an end-user license agreement for TrackMan's software which provides for exclusive jurisdiction in the federal and state courts located in the State of New York of any claim or dispute or relating in any way to use of the software.

TRACKMAN

10. Two decades ago, the founders of TrackMan asked a simple question: could we track a golf ball? Since then, TrackMan's corporate parent, Denmark-based TrackMan A/S, has worked in collaboration with the world's best golfers, teachers, and equipment manufacturers to develop technology and manufacture devices that provide accurate, real-time data on ball collision, launch, flight, and landing. Today, the technology developed by TrackMan A/S captures a wide range of data never before available – club speed, ball speed, curve, landing spin, launch angle, spin rate, spin axis, apex, carry, and more.

11. TrackMan technology has numerous applications in the sport of golf, serving professional and amateur players, instructors, driving ranges, golf clubs, tournaments, and broadcasters. TrackMan's offerings include launch monitors, simulators, and driving range solutions.

TrackMan Launch Monitors

12. TrackMan offers and sells launch monitors for golf ball tracking.

13. The latest version, TrackMan 4, is a portable launch monitor that uses two radars and one camera to track the full trajectory of any golf shot, from short putts to 400-yard drives. Among its features, TrackMan 4 pinpoints the landing position of the ball and maps a shot's 3D trajectory in real-time. Using the TrackMan Go app, players can control

the TrackMan 4 unit directly from an iOS device and capture and analyze, in real-time, data on full swings and putting strokes.



14. TrackMan launch monitors are the gold standard in ball tracking for golf professionals. More than 1,000 tour players use TrackMan launch monitors, with more than 90 of the Top 100 players in the world using TrackMan for club delivery and ball flight analysis, shot testing, and optimizing their equipment.

15. TrackMan launch monitors are available both to professionals and the wider golfing public.



Portable, simple to set up, and easy to use at any time of day and in any weather conditions, TrackMan launch monitors provide world-class ball tracking technology and data to players of all skill levels.

TrackMan Simulator

16. TrackMan's industry-leading simulators provide an immersive golf experience away from the course, for year-round training, both indoors and outdoors.

17. TrackMan Simulator incorporates, among other features, a TrackMan launch monitor, impact location lights that allow the monitor to see what is happening with the club and the ball at the moment of impact, a video projector, and an impact screen that displays the simulation and keeps golf balls from rebounding. TrackMan Simulator is powered by Virtual Golf 2, a computer program developed and updated over the course of the last decade.

18. TrackMan designs and builds simulators tailored to the specifications of private individuals and commercial establishments. Below is an example of a TrackMan Simulator:



19. TrackMan Simulator allows players to practice their golf game through features like Shot Analysis and the Test Center that give actionable feedback. Players can apply those findings in simulated real-world conditions using On Course Practice and the Target Practice Range.

20. TrackMan Simulator players also can choose to play more than 180 courses from around the world, including the iconic Royal St. Andrews and Pebble Beach. TrackMan A/S has a dedicated team that uses drone mapping to render courses in extraordinary detail with high-definition graphics.

TrackMan Range

21. TrackMan Range is a “360” solution for commercial golf ranges, golf clubs, and entertainment ranges.



22. TrackMan Range incorporates, among other technology, TrackMan launch monitors for ball tracking, instruction, and club fitting; flight tracking on the range using multiple radars to create an overlapping tracking-field array; and Virtual Golf 2 for a fully-rendered version of golf courses on all TrackMan platforms, ensuring that every feature and target is replicated exactly so that players can see their shots illustrated in highly accurate graphics in the app or on an in-bay screen.

23. Together, TrackMan's launch monitors, simulators, and range solutions are changing the experience of golf. TrackMan technology is helping professionals, amateurs, and casual players to unleash their potential in the sport, advancing how golf is played, taught, and viewed.

TRACKMAN SOFTWARE

24. TrackMan offers TrackMan Performance Studio ("TPS"), a golf swing and shot-analysis software tool with totally integrated video and data for use on TrackMan launch monitors.

25. In addition to TPS, TrackMan offers "Virtual Golf 2." Virtual Golf 2 is simulator software that allows users to play golf in realistic environments. Virtual Golf 2

simulates play on more than 180 courses around the world and on golf courses and ranges replicated by TrackMan Range. Virtual Golf 2 is seamlessly integrated into TPS.

26. Virtual Golf 2 is the product of years of development. That development began with Perfect Parallel, Inc. (“Perfect Parallel”), a software technology company.

27. In November 2012, TrackMan A/S and Perfect Parallel announced an agreement to develop an integration of their respective products. After years of development, on January 22, 2015, Perfect Parallel released Perfect Golf, a golf game that provides an immersive experience centered on high-resolution visuals, accurate ball flight physics developed using state-of-the-art launch monitors, and hyper-realistic gameplay. Below is a screenshot from Perfect Golf:



28. According Perfect Parallel, Perfect Golf was “the best simulation of golf released to date.”¹

29. Perfect Golf includes “Course Forge” software which allows users to design golf courses that can be played in Perfect Golf. Course Forge is included as a download with

¹ Perfect Golf, https://store.steampowered.com/app/288140/Perfect_Golf.

the purchase of Perfect Golf. Perfect Golf also includes an API for external tournament sites to be able to fully integrate into Perfect Golf for online real-time scoring and tracking.²

30. Perfect Parallel provides Perfect Golf for download on Steam. Users who buy and download Perfect Golf (and included software like Course Forge and the tournament API) are subject to the Perfect Parallel End User License Agreement (the “Perfect Parallel EULA”).³

31. Effective January 1, 2018, TrackMan A/S acquired Perfect Parallel, including Perfect Golf and all of Perfect Parallel’s software assets and intellectual property rights. Since the acquisition, Perfect Parallel has helped to develop, and TrackMan A/S has released, golf simulation software “Virtual Golf” (released May 1, 2018) and “Virtual Golf 2” (released November 20, 2019) for use with TrackMan launch monitors.

32. TrackMan has obtained exclusive United States rights in Perfect Golf, Virtual Golf, and Virtual Golf 2.

GSPRO

33. GSPro develops and provides golf simulator software (the “GSPro Software”). GSPro is a relatively recent entrant into the golf simulator market.

34. On information and belief, GSPro and Mr. Bogavac have downloaded, installed, and used Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge and the tournament API. On information and belief, in 2020 Defendants began developing golf simulator software based on Perfect Golf, Virtual Golf, and Virtual Golf 2. TrackMan was not aware of Defendants’ development efforts at that time.

² *Id.* The later versions of Perfect Golf – Virtual Golf and Virtual Golf 2 – also include Course Forge and the tournament API.

³ Perfect Parallel End User License Agreement, https://store.steampowered.com/eula/288140_eula_0.

35. On information and belief, GSPro and Mr. Bogavac released a beta version of the GSPro Software in the second quarter of 2021, and they released the GSPro Software on October 1, 2021.

36. The GSPro Software purports to offer “[a]mazing 4k graphics, ultra realistic ball physics, and a massive community who constantly contributes.” The GSPro Software purports to offer “[u]nrivaled game physics” that “set GSPro apart from the competition.”⁴ GSPro also encourages its users to play other users online using the Simulator Golf Tour (SGT) platform.⁵

37. GSPro officially supports a number of launch monitors, including Uneekor EyeXO, Uneekor QED, Flightscope Mevo+, Flightscope Xi, Flightscope X2, Flightscope X3, and Ernest Sports ES16 / Tour Plus. GSPro also offers an open API and interface, allowing users to integrate and use GSPro with launch monitors such as GC2, GC3, and GCQuad through these user-made interfaces. These launch monitors compete with TrackMan’s launch monitors, including TrackMan 4.

38. GSPro commercially markets and sells the GSPro Software to the public. GSPro offers several purchase options: (a) a “GSPro Subscription w/Simulator” where users pay an annual fee of \$250 for access to the GSPro software and updates for the life of the subscription; (b) a “Lifetime Add-On,” which is an “upgrade” to the subscription where users can continue using the software even after cancelling a subscription, for a one-time fee of \$350; and (c) a “GSPro Subscription + Lifetime Add-On” where users purchase both a subscription (including all GSPro updates until the subscription is cancelled) and a lifetime add-on for \$550 for the first year and \$250 for each following year.

⁴ GSPro, <https://gsprogolf.com>.

⁵ *Id.*

DEFENDANTS' UNLAWFUL CONDUCT

39. GSPro and Mr. Bogavac have acted in concert, and as agents for each other, for their mutual benefit, with respect to all of Defendants' conduct alleged in this complaint.

40. On information and belief, GSPro and Mr. Bogavac have downloaded, accessed, and used Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge and the tournament API.

41. The software that Defendants have downloaded and used is subject to the Perfect Parallel EULA, which remains in full force and effect.

42. The Perfect Parallel EULA authorizes certain uses of the software. The EULA grants users a personal, limited, non-exclusive license to install and use the downloaded software on a single computer for personal, non-commercial use.⁶

43. The Perfect Parallel EULA expressly prohibits other uses of the software. The EULA prohibits commercial use of the software and also of any "User-Generated Content." (The EULA defines "User-Generated Content" to include "virtual terrain and golf courses with enhanced features" that users create using Course Forge.) Prohibited commercial uses include (a) the duplication, distribution, sale, rental, lending, or display of the software or User-Generated Content "in a commercial setting," and (b) any other use of the software or User-Generated Content "in any way, directly or indirectly, to generate revenue for yourself or any third party or in exchange for any consideration or value of any kind"⁷

44. The Perfect Parallel EULA contains other prohibitions with respect to the software. Prohibited uses include (a) making any copies of the software other than an archival copy; (b) modifying or creating any derivative works of the software; (c) decompiling, disassembling, reverse engineering, or otherwise attempting to derive the

⁶ Perfect Parallel End User License Agreement, https://store.steampowered.com/eula/288140_eula_0.

⁷ *Id.*

source code, underlying ideas, or algorithms of the software; (d) attempting to gain unauthorized access to any service, account, computer system or network associated with the software; (e) attempting to scrape, copy, resell or redistribute our databases either manually or through automated means; (f) renting, lending, leasing, assigning, sublicensing or otherwise transfer rights to the software; (g) blocking, disabling, or otherwise effecting any feature that constitutes an integral part of the software; (h) using the software in any way that violates the EULA or any law; and (i) authorizing or assisting any third party or using automated means to do any of the things described in these prohibitions.⁸

45. Defendants have violated the terms of the Perfect Parallel EULA. Defendants have, for commercial purposes and in violation of other terms of the Perfect Parallel EULA, downloaded, accessed, and used Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge and the tournament API.

46. Defendants also have infringed the copyrights in Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge and the tournament API, by exercising, without authorization, TrackMan's exclusive rights.

47. Defendants' unlawful conduct includes without limitation the following:

a. Defendants downloaded, accessed, and used Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge, to develop the GSPro Software. As part of their development efforts, Defendants copied and incorporated TrackMan's copyright-protected Course Forge code base directly into the GSPro Software. Defendants' conduct was for commercial purposes.

b. Defendants downloaded, accessed, and used golf courses created by Course Forge users for use in connection with GSPro Software. These golf courses are "User-Generated Content" subject to the non-commercial use and other

⁸ *Id.*

requirements of the Perfect Parallel EULA. After gaining access to the user-designed courses, GSPro created a tool that allows users to “convert,” without authorization, the user-generated golf courses for use in the GSPro Software. Doing so has allowed GSPro to supply its “community” with hundreds of courses designed in Course Forge that otherwise would have taken GSPro years to develop. Defendants’ conduct was for commercial purposes.

c. Perfect Golf, Virtual Golf, and Virtual Golf 2 include copyright-protected API data structures for simulating golf competitions. Without permission, Defendants downloaded, accessed, copied, and used these data structures inside the GSPro Software, allowing existing websites that previously provided online competitions for Perfect Golf users to provide online competitions for GSPro users, without any additional development. GSPro and Simulator Golf Tour have charged subscriptions for these services. Defendants’ conduct was for commercial purposes.

d. Perfect Golf, Virtual Golf, and Virtual Golf 2 include a copyright-protected “sim connector.” The sim connector translates output from simulators into streamlined launch strings that can be launched inside the software. For example, the sim connector will send a request to a simulator unit asking if it has approval to be used for the software; if approved, the software will take the launch string over websocket on the simulator unit and send the ball off in the game. On information and belief, Defendants copied or reverse-engineered, without permission, the sim connector in order to bypass the approval request. Defendants’ conduct was for commercial purposes.

48. Defendants’ conduct is intentional and willful. Between February and March 2021, TrackMan corresponded with Mr. Bogavac concerning Defendants’ unlawful conduct. GSPro and Mr. Bogavac nevertheless continued their unlawful conduct.

FIRST CAUSE OF ACTION

(Direct Copyright Infringement – GSPro and Davor Bogavac)

49. TrackMan repeats and realleges paragraphs 1 through 48.

50. Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge and the API data structures embodied in them, are original works of authorship fixed in a tangible medium of expression and are protected by copyright. *See* 17 U.S.C. § 102(a); *see also* 17 U.S.C. § 101 (“A ‘computer program’ is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.”). The copyrights in the software are valid and subsisting.

51. Copyright protection in this software includes both the literal code and the structural elements – the original structure, sequence, and organization – of the code.

52. TrackMan owns exclusive U.S. rights in Perfect Golf, Virtual Golf, and Virtual Golf 2, including in Course Forge and the API data structures.

53. TrackMan owns the following U.S. Copyright Office registrations:

- a. U.S. Copyright Reg. No. TX 9-168-826 for Perfect Golf;
- b. U.S. Copyright Reg. No. TX 9-169-749 for Virtual Golf; and
- c. U.S. Copyright Reg. No. TX 9-169-579 for Virtual Golf 2.

These registrations include Course Forge and the API data structures.

54. TrackMan has acquired and owns all accrued causes of action for copyright infringement with respect to the Perfect Golf, Virtual Golf, and Virtual Golf 2, including accrued causes of action in Course Forge and the API data structures.

55. Defendants’ use of the software was unauthorized. Defendants’ use of the software exceeded the rights granted in the Perfect Parallel EULA. As a result, such use is unauthorized and unlicensed. In addition, the Perfect Parallel EULA expressly provides that it automatically terminated if Defendants failed to comply with any of its terms. Defendants’

unauthorized conduct resulted in termination of the Perfect Parallel EULA. None of Defendants' uses of Perfect Golf, Virtual Golf, and Virtual Golf 2 is licensed.

56. Defendants had access to TrackMan's software by buying and downloading a copies of it. Defendants' GSPro Software is substantially similar to TrackMan's software. Defendants' use of the software violated TrackMan's exclusive rights of reproduction, distribution, preparation of derivative works, public display, and public performance under 17 U.S.C. § 106. Accordingly, Defendants' conduct is an infringement of copyright in violation of 17 U.S.C. § 501.

57. Both GSPro and Mr. Bogavac are directly liable for copyright infringement. Mr. Bogavac is the founder and CEO of GSPro, and he manages and operates the company on a day-to-day basis. Mr. Bogavac was fully aware of Perfect Golf, Virtual Golf, and Virtual Golf 2 during the development of the GSPro Software. Mr. Bogavac has the right and ability to supervise GSPro's infringing activity, he engaged in the infringing activity, and he has a financial interest in that activity. Mr. Bogavac has personally participated in the conduct alleged in this complaint, including by personally directing GSPro's conduct and by downloading, accessing, copying, using Perfect Golf, Virtual Golf, and Virtual Golf 2 without authorization.

SECOND CAUSE OF ACTION

(Indirect Copyright Infringement – Davor Bogavac)

58. TrackMan repeats and realleges paragraphs 1 through 57.

59. Mr. Bogavac is liable for contributory copyright infringement. At all times, Mr. Bogavac has had knowledge of GSPro's infringing activity, and he induced, caused, and materially contributed to GSPro's infringing conduct. Mr. Bogavac is the moving, active, and conscious force behind the GSPro's infringement. On information and belief, Mr. Bogavac personally engaged in and directed the infringing conduct alleged in this complaint.

60. Mr. Bogavac is vicariously liable for copyright infringement. At all times, Mr. Bogavac had the right and ability to supervise and control GSPro's infringing activity, as the founder and CEO of GSPro who personally engaged in and directed the infringing conduct alleged in this complaint. Mr. Bogavac has received income, and he has enjoyed a direct financial benefit, from the infringing activity of GSPro, which is of a commercial nature.

61. TrackMan has acquired and owns all accrued causes of action for copyright infringement with respect to the Perfect Golf, Virtual Golf, and Virtual Golf 2, including accrued causes of action in Course Forge and the API data structures.

THIRD CAUSE OF ACTION

(Breach of Contract – GSPro and Davor Bogavac)

62. TrackMan repeats and realleges paragraphs 1 through 61.

63. The Perfect Parallel EULA is a valid contract and is in full force and effect.

64. Defendants agreed to be bound by the terms of the Perfect Parallel EULA by accepting its terms, and by installing, copying, and using Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge.

65. The Perfect Parallel EULA is binding on Mr. Bogavac, who agreed to its terms and who installed, copied, and used the software. The Perfect Parallel EULA also is binding on GSPro, as Mr. Bogavac acted on GSPro's behalf, and as GSPro agreed to the terms of the Perfect Parallel EULA and installed, copied, and used the software.

66. Under the Perfect Parallel EULA, Defendants agreed to use the software solely for personal, non-commercial purposes; not to duplicate or distribute any part of the Software in a commercial setting; not to create derivative works based on the software; not to decompile or reverse-engineer the software; and not to assist any third party in making a prohibited use of the software.

67. Defendants breached these and other terms of the Perfect Parallel EULA with respect to Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge and the API data structures. Defendants made commercial use of the software. Defendants reproduced the software's data structures in Defendants' competing software. Defendants replicated or reverse-engineered the software's sim connector for their competing software. Defendants adapted, modified, and created derivative works based on the software. Defendants assisted third parties with making unauthorized copies of the software.

68. In addition, Defendants breached the Perfect Parallel EULA by making unauthorized uses, including commercial uses, of "User-Generated Content" – namely, the golf courses created in Course Forge by users.

69. Defendants' breaches are material and caused damage to TrackMan.

70. TrackMan has acquired and owns all accrued causes of action for breach of the Perfect Parallel EULA with respect to Perfect Golf, Virtual Golf, and Virtual Golf 2, including in Course Forge and the API data structures.

71. Defendants are liable to TrackMan for breach of contract under the laws of the State of New York.

PRAYER FOR RELIEF

Plaintiff TrackMan requests judgment in its favor and against Defendants GSPro and Davor Bogavac, jointly and severally, including the following relief:

1. A permanent injunction prohibiting Defendants from accessing, copying, and using Perfect Golf, Virtual Golf, and Virtual Golf 2, including Course Forge and the API data structures embodied in the software, and from creating works that are substantially similar to the literal code or to the protected structure, sequence, and organization of the software;

2. A permanent injunction prohibiting Defendants from accessing, copying, and using golf courses designed in Course Forge, including Defendants' continued use of courses that Defendants enabled users to "convert" from Course Forge;
3. An award of TrackMan's actual damages and Defendants' profits attributable to the infringement;
4. An award of compensatory, consequential, special, and punitive damages;
5. An award of TrackMan's attorney's fees and costs; and
6. Such other and further relief as this Court deems appropriate.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38, TrackMan demands a trial by jury as to all claims to which it is entitled.

Dated: New York, New York
January 24, 2023

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